

### **REMARKS**

Claims 1-19 are pending in the application. Claims 1, 4, 5, 9, 10, 14 and 15 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,976,159 to Bolduc et al. Claims 1, 4, 7, 8, 10, 14 and 15 stand rejected as being allegedly anticipated by U.S. Patent No. 5,695,504 to Gifford et al. Claims 2-3, 6, 11-13 and 16-19 are objected to as being dependent upon a rejected base claim, but would be otherwise allowable if rewritten in independent form.

### **Information Disclosure Statement**

The Office action discusses an IDS filed on September 23, 2003 and indicates that it was not considered because it did not contain a reference to the serial number of this application. There appears to be some confusion as the undersigned's records indicate that an IDS was filed on September 12, 2003, contemporaneous with the filing of the application, but not on September 23, 2003. The September 12, 2003, IDS contained several 1449s from earlier filed related applications. In accord with the Rules, these 1449s identified the references listed thereon with the appropriate patent number and publication date. The September 12, 2003 IDS did not identify the instant application by serial number. However, since it was filed contemporaneous with the application the serial number was not known when the document was created.

The undersigned submits that the September 12, 2003 IDS complies with the Rules, which require that the references disclosed therein be identified by number and publication date. Consequently, the undersigned requests reconsideration of the objection and consideration and entry of each of the references identified in the September 12, 2003, IDS.

### **35 U.S.C. 102**

Claim 1, the sole independent claim, is directed to a device for endoscopically deploying a multi-legged hemostatic clip. This claim generally describes a device containing a ring portion adapted to fit on the end of an endoscope, a plurality of legs attached to this ring, and a locking mechanism to restrict movement of the legs from a closed position to an open position. As the application explains, a device embodying the invention may be located at the distal end of an endoscope and may be used to compress tissue and secure the tissue together with a multi-legged clip deployed by the device and endoscope. *See, e.g.*, Spec. at ¶¶ 17-18 and 181-182.

By comparison, the two references cited against claim 1 do not discuss or suggest the use of an endoscope to deploy a multi-legged clip. U.S. patent 5,976,159, the first reference, is

entitled "Surgical Clips and Methods for Tissue Approximation" and generally regards a stapling device that deploys single prong staples. The '159 patent is apparently cited for its disclosure of a flexible band 194 and clip 192 system of figures 11-13 of the patent. This clip system 190, however, is drawn and described as being used to secure vascular structures together during what is surely an invasive surgical procedure, a procedure that does not include the use of an endoscope. The clip system shown in figures 13A-13C, for example, is positioned around a graft vessel prior to and after attachment. Both the initial positioning of the clip system and the later securement of the graft to the vessel are shown as taking place without the use of or even the presence of an endoscope. Thus, the '159 patent does not disclose or suggest a device for endoscopic deployment of a hemostatic clip. The device in the '159 patent also differs from claim 1 because it lacks a locking mechanism. As can be seen in figures 11-13, the clips 192 are free to move and swing about the band 194, they are never locked by anything in the device and only become fixed when they are embedded into the graft vessel as shown in figure 13B. Thus, the '159 patent not only fails to regard a device for endoscopically deploying a clip and, therefore, "a ring portion adapted to fit on a distal end of an endoscope," it also fails to at least disclose or suggest "a locking mechanism to restrict movement of each of the legs from the closed position to the open position," as in claim 1.

U.S. patent 5,695,504, the second patent cited against claim 1, is entitled, "Devices and Methods for Performing a Vascular Anastomosis." The devices disclosed in the '504 patent are used "for performing an end-to-side vascular anastomosis." *See '504 Patent Abstract.* The clips that are used in the '504 patent are not deployed endoscopically, rather, they are deployed with the various stapling and clipping devices shown in the '504 patent. In the embodiment of figure 30, which is cited against claim 1 (and certain dependent claims), a clip and washer system is disclosed. This system is shown in figure 30I with a grasping tool 372 and graft vessel 254. Thus, two distinct components are used to deploy the system, neither one of which is an endoscope. The other embodiments in the '504 show similar configurations, none of which show an endoscope, let alone a ring adapted to fit on an end of endoscope as recited in claim 1. Accordingly, the system of the '504 Patent differs not only because it does not regard endoscopic multi-legged clip deployment, but also because it fails to at least suggest or disclose a ring adapted to fit on the distal end of an endoscope as in claim 1.

For at least these reasons claim 1, and each of its dependent claims, are patentable over the cited references.

## CONCLUSION

Reconsideration and allowance of each of the pending claims is requested pursuant to the above remarks.

Although no fees are believed to be due, the Office is authorized to charge any fees under 37 C.F.R. §§ 1.16 or 1.17 to deposit account no. 11-0600. The Examiner is invited to call the undersigned if questions should arise.

Respectfully submitted,



\_\_\_\_\_  
Fred Grasso  
Reg. No. 43,644

Date: September 8, 2005

KENYON & KENYON  
1500 K Street, N.W., Suite 700  
Washington, D.C. 20005  
Tel: (202) 220-4200  
Fax: (202) 220-4201  
FTG/bep 575459v1